

Before the.  
UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Martinsburg ,Post Office  
Martinsburg, New York

Docket No.A2011-77

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(November 25, 2011)

I. INTRODUCTION AND BACKGROUND

On September 16, 2011, the Commission docketed the petition for review of the closing of the Martinsburg Post Office in Martinsburg, Lewis County, New York.<sup>1</sup> On September 21, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.<sup>2</sup> Thereafter, on October 3, 2011, the Postal Service filed an electronic version of the administrative record concerning its Final Determination to Close the Martinsburg Post Office, Postal Service Docket Number 1433801-13404.

The Petitioners did not file a Participant Statement but filed with the Commission on October 20, 2011, a letter addressed to the Postal Service's Ms. Michelle Krul, Central NY East P.O. Operations Manager, dated October 20, 2011 regarding their appeal. The Postal Service filed comments supporting its closure determination on November 3, 2011, in lieu of a legal brief.<sup>3</sup>

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<sup>1</sup> Letter submitted by citizens of Martinsburg to the Commission with a list of 67 signatures attached, dated September 8, 2011.

<sup>2</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 21, 2011 (Order No. 866).

<sup>3</sup> United States Postal Service Comments Regarding Appeal, November 3, 2011 (Postal Service Comments).

## II. STATEMENT OF FACTS

The Martinsburg Post Office is described by the Postal Service in its Final Determination as an EAS-11 level post office. AR, Item No. 47 at 2 (hereafter, FD at 2). Before being closed, the Martinsburg Post Office is providing service to 86 post office box customers and retail customers who engaged in an average of 13 daily window transactions during the survey period. AR, Item No. 10; FD at 9.

On February 25, 2011, the Manager, Post Office Operations requested permission to investigate the possible closure of the Martinsburg Post Office. AR, Item No. 1. The request was granted on the same day. *Id.*

On May 3, 2011, the Postal Service notified customers of the Martinsburg post office of a "possible change in the way your postal service is provided." AR, Item No. 21 at 1. As described in the notice, customers were given the option of receiving pickup and delivery of mail and the sale of stamps and other customary service by rural route service administered by the Lowville post office located 3.0 miles away.<sup>4</sup> *Id.* Included in the letter was a questionnaire to be completed and returned by May 12, 2011. *Id.* In addition, customers were invited to attend a public meeting on May 12, 2011, at which Postal Service representatives would be available to answer questions and provide information about postal service. *Id.*

Of the 89 questionnaires distributed by the Postal Service, 36 were completed and returned: 4 responded favorably to the proposal; 22 expressed opposition or concern; and 10 expressed no opinion. FD at 2. The meeting was held on May 12, 2011, as scheduled with 21 customers in attendance. *Id.* In addition, a petition supporting retaining the Martinsburg post office was received by the Postal Service on May 12, 2011. *Id.*

On May 28, 2011, a formal proposal to close the Martinsburg post office was forwarded to that post office for posting for a period of sixty days. *Id.* An invitation to

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<sup>4</sup> Mapquest estimates the driving distance between the Martinsburg and Lowville post offices to be approximately 3.8 miles (6 minutes driving time).

file comments was also posted in the Lowville post office. *Id.* Several comments were received during the posting period that ended July 29, 2011. On August 19, 2011, the Final Determination to close the Martinsburg Post Office was approved. FD at 9. The Final Determination summarizes and responds to the comments on the Proposal. *Id.* at 2-4. The decision was posted at the Martinsburg post office on August 25, 2011 to September 26, 2011 and at the Lowville post office on August 25, 2011 to September 28, 2011. AR, Item No. 49 at 1-2.

The Final Determination considered and responded to the community's expressed postal needs including the comments on the Proposal, the questionnaires, the community meeting and the petition, and concluded that the final determination will provide a maximum degree of effective and regular postal services to the community. The Postal Service further considered the effect on the community including additional expressed concerns, the effect on employees and the estimated economic savings. The Postal Service concluded the advantages outweigh the disadvantages, and that the final determination is warranted.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

In the Petition, Petitioners request consideration of four options to reduce the projected annual costs of replacement: (1) suspend all retail sales at Martinsburg; (2) continue service to 86 Post Office Box customers but charge the rental fee; (3) provide delivery service by rural route carrier to the current Post Office Boxes at Martinsburg without fee; or (4) if a rural carrier is unsatisfactory under option 3, use a Lowville employee to load the Martinsburg Post Office Boxes and pick up mail at the one location.

By letter submitted October 20, 2011, concerned citizens offer additional reasons for maintaining the Post Office Boxes in Martinsburg as "cluster boxes," suggest the addition of a stamp machine at Martinsburg in lieu of retail service, and request a

meeting with Postal Service officials to discuss the suggestions. The record does not indicate whether the Postal Service has responded to the letter.

#### B. The Postal Service

On November 4, 2011, the Postal Service's comments were accepted for filing in lieu of the answering brief permitted by Order No. 866. In that filing, the Postal Service supports its decision to close the Martinsburg post office on the basis that it complied with the requirements of 39 U.S.C. 404(d). It says the Postal Service considered the effect on customers and properly concluded that it will continue to provide regular and effective service. It also considered the effect on the community, the effect on employees, and the economic savings.

The Postal Service says that it did not include the cost of decommissioning the Martinsburg post office because it is a Postal Service-owned facility. The pictures in the record indicate the facility is a mobile trailer fixed in place semi-permanently on a block foundation.. AR, Item No. 7. The Postal Service states the costs of decommissioning are unclear but disposal may possibly generate a small amount of revenue. Postal Service Comments at 9. The Postal Service also states that its cost estimates are based upon statutory obligations. *Id.*

### IV. STANDARD OF REVIEW AND APPLICABLE LAW

#### A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record.

Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.<sup>5</sup>

#### B. The Law Governing Postal Service Determinations

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

#### V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Martinsburg post office, and the Postal Service's Comments, the Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Martinsburg post office is not

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<sup>5</sup> Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal. The petitioner in this proceeding did not request suspension of the closure of the Martinsburg post office..

arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence.

Although the Postal Service has met the statutory burden imposed upon it for post office closings, there are two points that suggest the Postal Service's decision ought to be renegotiated with the community in light of suggestions offered by the community after the close of the administrative record.

While the Postal Service did consider economic savings as it has in other post office closings by using the postmaster's salary and benefits, in this case the estimated savings are very probably exaggerated. The Postmaster's salary and benefits are estimated in the Final Determination to be \$44,279. This amount is far larger than the estimated cost of replacement delivery service of \$25,117. However, the Martinsburg office has been run with a PMR since 2006 at a considerably lower rate of pay. The actual savings in labor is therefore considerably less than the cost of replacement delivery service and most likely close to the cost, or actually less than the cost, of replacement service. Given the high cost of replacement delivery service, the Postal Service may in reality *increase* its costs by closing the Martinsburg post office.

Also, In this case, unlike many other post office closings, the Postal Service owns the facility so that there will be no savings of rent by closing the facility. This too provides the Postal Service greater flexibility to fashion an economic outcome more satisfactory to the community.

In addition, although the suggestions presented in the appeal, and a later letter filed with the Commission dated October 20, 2011 offering additional suggestions, were each filed after the close of the administrative record, they appear to offer at least one viable and a more satisfactory outcome for both the Postal Service in terms of savings and for the community in terms of its apparent preference over rural route delivery service for essentially "cluster boxes" at the Martinsburg facility.

For instance, there is no rent on the facility because the Postal Service owns it. The Postal Service normally installs cluster boxes at its own expense. The Postal Service could either sell or donate the trailer as a "cluster box" to provide service to the

community without offering delivery service to each house but only to the facility.. On the basis of the facts in the record, this would clearly provide greater savings to the Postal Service. Also, one of the options offered by the Petitioners is to pay for the boxes. Although normally cluster boxes do not pay a Post Office box fee, it fees are collected on these boxes, as post office boxes, that would yield an additional revenue source for the Postal Service.

Thus, in the abstract, the Postal Service has complied with the statutory requirements, but it appears that other solutions could result in a more preferred result if the Postal Service would meet with the citizens to discuss the alternatives the citizens proposed after the Final Determination.

## VI. CONCLUSION

For the reasons set forth above, the decision of the Postal Service to close the Martinsburg post office should be affirmed, but the Commission should urge the Postal Service to enter into discussions with the community to consider the options, posed untimely by Petitioners, to obtain an outcome that provides a greater economic benefit to the Postal Service and services more desired by the community...

Respectfully Submitted,

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